§ 31.22 Approval of certain certificates of incorporation or articles of organization; granting of operating certificates.

(a) No certificate of incorporation of a business or not-for-profit corporation, or articles of organization of a limited liability company, shall hereafter be filed which includes among its corporate purposes or powers the establishment or operation of a facility for which an operating certificate is required by this article from the commissioner of the office of mental health or the solicitation of contributions for any such purpose, except with the written approval of the commissioner and, when otherwise required by law, the approval of a justice of the supreme court endorsed on or annexed to the certificate of incorporation.

(b) An application for approval of the proposed certificate of incorporation or articles of organization shall be filed with the commissioner together with such other forms and information as shall be prescribed by, or acceptable to, the commissioner.

The commissioner shall not approve a certificate of incorporation or articles of organization or grant an operating certificate unless he is satisfied, insofar as applicable, as to (1) the public need for the services or the facility which the proposed corporation or proposed provider of services is empowered to perform or maintain at the time and place and under the circumstances proposed; (2) the character, competence and standing in the community of the proposed incorporators, directors, sponsors, stockholders, members, managers, partners, or operators, provided that in making such determination the commissioner is authorized to consider whether or not, within ten years of the date of the application, any such persons have been denied renewal for cause of an operating certificate, or have had an operating certificate revoked or suspended for cause, and such denial, revocation or suspension was not reversed after an administrative hearing or other appeal, for a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state or have failed to operate a program serving the mentally disabled, other disabled persons as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene,

residential, social or educational services in continuous compliance with applicable laws or regulations within the previous ten years in any state; (3) the financial resources of the proposed corporation or proposed provider of services and its sources of future revenues; (4) the availability of facilities or services which may serve as alternates or substitutes for the facility or services which the proposed corporation or proposed provider of services is empowered to maintain or render; (5) such other matters as he shall deem pertinent in the public interest. The commissioner in approving the proposed certificate of incorporation or articles of organization or issuing the proposed operating certificate may request and consider information and advice from all available sources including local and regional mental health and health planning agencies and groups as to the matters set forth herein. If the commissioner proposes to disapprove the application he shall afford the applicant an opportunity to request a public hearing. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held. The commissioner, on his own motion, may hold a public hearing on the application. Any public hearings held pursuant to this subdivision may be conducted by the commissioner or by an individual designated by the commissioner.

(c) (1) Any change in the person or entity which is the holder of an operating certificate of a facility for which an operating certificate has been issued pursuant to this article shall be approved by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) and (b) of this section, except that: (i) any such change shall be subject to approval by the commissioner in accordance with paragraph two of subdivision (b) of this section only with respect to the new person or entity, and any remaining persons or entities who have not been previously approved for that facility in accordance with such paragraph; and (ii) any such change shall not be subject to paragraph one of subdivision (b) of this section.

(2) Any transfer, assignment or other disposition of ten percent or more of the stock, membership interest or voting rights thereunder of a corporation or a limited liability company which is the holder of an

operating certificate for a facility providing mental hygiene services or any transfer, assignment or other disposition of the stock or voting rights thereunder of such a corporation which results in the ownership or control of more than ten percent of the stock, ownership or voting rights thereunder of such corporation or limited liability company by any person shall be subject to approval by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) and (b) of this section and rules and regulations promulgated pursuant thereto. In the absence of such approval, the operating certificate of such facility shall be subject to revocation or suspension, except that: (i) any such transaction shall be subject to approval by the commissioner in accordance with paragraph two of subdivision (b) of this section only with respect to a new stockholder, member or a new principal stockholder; and (ii) any such transaction shall not be subject to paragraph one of subdivision (b) of this section.

(3) No operating certificate shall be issued for a facility which would be operated by any partnership or limited liability company, any of the members of which are not natural persons.

(4) No operating certificate shall be issued for a facility which would be operated by a corporation any of the stock of which is owned by another corporation or a limited liability company any of the stock of which is owned by another corporation.

(d) Where the approval required by subdivision (a) of this section has not been obtained, the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling (1) the certificate of incorporation of any such corporation or articles of organization of any such limited liability company, or (2) the certificate of incorporation of any corporation or articles of organization of any such limited liability company hereafter incorporated or formed, the name, purposes, objectives, or activities of which in any manner may reasonably lead to the belief that the corporation or limited liability company possesses or may exercise any of such purposes.